

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 524 of 2005

Between:

Ch. Narayanacharulu S/o.late Sitharamachary
Sri Laxmi Nilayam Side of old MRO Office,
Madugula 531027, Visakhapatnam dist.

..... PETITIONER

AND

1. Union of India rep by its Principal Secretary
New Delhi 110011.
2. The Flag Officer Commanding in-Chief. Eastern Naval Command,
3. The Chief Controller of Defence Accounts (Pensions)

Draupadhi Ghat,Allahabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or Direction more particularly one in the nature of *Writ of Mandamus*, declaring the action of the Respondents in not taking into consideration the Annual increments @ Rs.40/- which were due on 1-5-86, 1-5-87, 1-5-88 and 1-5-89 and also the special pay of Rs.70/- while sanctioning the Compassionate allowance as arbitrary, illegal and violative of FR 22C and further declare that the recoveries made from the Compassionate Allowance as illegal, contrary to law and with out jurisdiction and consequently direct the respondents to fix the Compassionate Allowance after taking into consideration the Annual increments which were due on 1-5-86,1-5-87 1-5-88 and 1-5-89 and also the Special Pay of Rs.

70/- and refund the amounts which were illegally recovered from the Compassionate Allowance of the petitioner with all consequential benefits and pass such other order or orders.

Counsel for the Petitioner: MR. M.C.ACHARULU

Counsel for the Respondents: MR. KANTHI NARAHARI REDDY (SC FOR CG)

The Court made the following:

ORDER:(Per GBJ)

The writ petition is filed, assailing the order passed by the Tribunal in O.A.1352 of 2003, dated 06.02.2004.

The petitioner filed O.A. praying the following 9 reliefs:

- i. A direction upon respondent No.2 to make refund of all violated recoveries together with penal interest @ 12% p.a. as per Rule 68.
- ii. To make refund of Rs.14,300/- and Rs.14,560/-, recovered in PPO dated 5.9.1989 and 2.5.1990 respectively, as the said recoveries were made from the compassionate allowance, which is not permissible under law.
- iii. As the recovery of Rs.5,732/- from the compassionate allowance was made on 16.02.1990 and the same was proved as violative of FR 53, respondent No.2 be directed to refund the said amount, together with penal at 12%.
- iv. Respondent No.2 be directed to make refund of Rs.16,082.10ps. together with penal interest, as respondent No.2 is not the competent authority to issue the letter dated 28.10.1991 and make the PDO to recover the said amount. As per Rules, no such dues except the licence fee can be recovered out of the reliefs on pension.
- v. Compassionate Allowance equal to $\frac{2}{3}^{\text{rd}}$ of gratuity and not the full gratuity amount was granted to the applicant and this is violative of Rule 41 of Pension Rules, 1972, as also in violation of the punishment order. Hence, respondent No.2 be directed to make refund of $\frac{1}{3}^{\text{rd}}$ amount of gratuity to the applicant, which was earlier not granted to him;
- vi. Respondent No.2 and 3 who have granted compassionate allowance to the applicant, taking into consideration qualifying service of 28 years instead of 32 years, and basic pay of Rs.1560/- instead of Rs.1790/- (including Rs.70/- as special pay), be directed to

work out correctly and make correct payment of compassionate allowance, together with penal interest at 12% p.a.

- vii. A direction upon respondent No.2 to supply Form No.24 annexed to Rule 32 and working sheets of compassionate allowance in the prescribed format, annexed to Rule 61 of Pension Rules, 1972, to enable the applicant to know the correctness of the compassionate allowance in both the cases of two punishments awarded to him;
- viii. Respondent No.1 be directed to sanction penal interest @ 12% p.a. in both the cases of punishment awarded to the applicant and also to take disciplinary action upon respondent No.2, since he alone had delayed the refunds of the amounts with deliberate rejections, violating all Government Rules.
- ix. A direction upon respondent No.2 to pay Rs.20,000/- as costs to the applicant as he deliberately violated his own orders of punishment and also not paid the full amount of gratuity and also imposed mental and financial torture upon the applicant for the last 14 years.

2. The Tribunal, however, taking sympathetic view of the matter, considered all the issues and came to the conclusion that the petitioner has been filing these cases time and again without there being any merit. It was also observed that he also raised similar points as raised in this O.A. in earlier O. As referred to by the tribunal and ultimately the Tribunal dismissed the O.A. by an order dated 06.02.2004. Against the said order, the present writ petition is filed.

3. The learned counsel for the petitioner submits that the tribunal has not properly appreciated the issues raised by the petitioner and therefore, the matter requires reconsideration.

4. We are afraid we cannot accept the contention raised by the learned counsel for the petitioner.

5 .The Tribunal has categorically observed that the petitioner has been unnecessarily indulge in litigation in paras-29 to 35 are relevant, which are extracted below:

"We have considered all the facts of the case and the material placed before us together with the arguments put forth by the learned counsel for the applicant as well as the respondents.

We find merit in the submissions made by the learned counsel for the respondents that the applicant had raised similar points, as made in the present O.A., in all the O. As filed earlier by him before this Tribunal, where the same were duly considered and rejected by this Tribunal. The applicant's case is, therefore, hit by *res judicata*. Counsel for the respondents had also objected to the fact that the applicant has claimed the reliefs again after a gap of more than 10 years and as such, the claims are hopelessly time barred.

In regard to the various claims made by the applicant in this O.A., we find that the recovery of Rs.14,300/- vide PPO dated 5th February, 1989 has already been cancelled. As such, the said PPO was also cancelled. The recovery of Rs.14,560/- vide PPO dated 2nd May, 1990, is quite in order since the recovery of Government dues has already been upheld by this Tribunal in O.A.No.421/1992 and R.P.No.71/1993. The recovery of Rs.5732/- from the applicant on account of compassionate allowance drawn by him for the period of deemed suspension is also in order as the applicant was only entitled to subsistence allowance for the period in question.

With regard to grant of compassionate allowance equal to 2/3rd of pension and gratuity to the applicant, the same is also in order as the disciplinary authority, while issuing the punishment order dated 21st March, 1990, had granted the applicant compassionate allowance equal to 2/3rd of pension and gratuity which would have been admissible to him had he retired on compensation pension in terms of Rule 41 (1) of CCS (Pension) Rules, 1972.

The recovery of Government dues of Rs.16,082.10 ps., from the applicant's reliefs on pension, was upheld by this Tribunal in O.A.No.421/1992 and R.P.71/93. Since the terminal benefits were to be calculated on the basis of the net qualifying service, the benefits that the applicant was entitled to, were correctly worked out. Since the disciplinary proceedings concluded with dismissal from service of the applicant, the period of his suspension, cannot be counted as qualifying service. Similarly, the current basic pay Rs.1560/- has been rightly taken into account for calculating the terminal benefits admissible to the applicant.

In view of the above, we do not find any merit in any of the contention/reliefs claimed by the applicant. Accordingly, the O.A. is dismissed with no order as to costs. M.A.660/2003 filed by the applicant, is also disposed of.

It is found that the applicant has been raising the same points/issues again and again by filing different O. As before this Tribunal and has been unnecessarily wasting his precious time as well as the time of this Court. We note that in future if he continues with this practice, the same shall be viewed seriously by this tribunal and in that case, heavy costs may be imposed upon him for filing applications which are frivolous, hit by *res judicata* and also time barred.”

In view of this, we do not find any merits. Accordingly, the writ petition is dismissed. No costs.

(G. BIKSHAPATHY, J)

Date: 22.02.2005.

Ksn

(P.S. NARAYANA, J)

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Principal Secretary, Union of India

New Delhi 110011.

2. The Flag Officer Commanding in-Chief. Eastern Naval Command,

3. The Chief Controller of Defence Accounts (Pensions)

Draupadhi Ghat,Allahabad.

4. 2 CD copies

5. 1 CC to MR.NARAHARI (OUT)

6. 1 CC to MR.ACHARULU (OUT)

6. Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

Form-NIC-OGS/WP{MVK}